

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY JOHNSON,

Petitioner,

Case No. 1:06-cv-855

v.

Honorable Wendell A. Miles

CINDI CURTIN,

Respondent.

ORDER DENYING MOTION TO DISQUALIFY MAGISTRATE JUDGE

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. Presently before the Court is Petitioner's motion to disqualify Magistrate Judge Ellen S. Carmody (docket # 32).

Petitioner attempts to bring this motion under Federal Rule of Civil Procedure 73(b) and 28 USC § 636(c), governing referrals to the United States Magistrate for trial and entry of judgment, which is not the case here. The court, however, has reviewed Petitioner's claims and find that they have no merit. Petitioner argues that Magistrate Judge Carmody's rulings to date exhibit bias. First, Petitioner argues that Respondent has had ample time to comply with Rule 5, although Petitioner does not explain how this demonstrates Magistrate Judge Carmody's bias. On May 4, 2007, the court entered an order directing Respondent to respond within 180 days (docket # 19); the time to comply with the order has not yet expired. Next, Petitioner argues that Magistrate Judge Carmody has purposefully failed to submit to Respondent docket entries 28 and 30, respectively Petitioner's motions for expedited hearing and for order directing

Respondent to provide investigative assistance. In the Western District of Michigan, electronic filing is available to non-incarcerated parties, which allows the Clerk of the Court to notify Respondent's attorney electronically that a motion has been filed, and the attorney may print it from the electronic case filing system. That Respondent has chosen not to respond to the motions is no indication that Magistrate Judge Carmody is preventing her from responding. Finally, Petitioner contends that Magistrate Judge Carmody demonstrated bias by ruling on his motion to vacate all referrals to Judge Carmody. The court's review of the docket sheet does not reveal any such motion.

Accordingly, the court DENIES Petitioner's Motion to Disqualify Magistrate Judge Ellen S. Carmody (docket #32).

So ordered this 9th day of October, 2007.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge